

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Notice of Proposed Rulemaking

CS Docket No. 02-52

Appropriate Regulatory Treatment for
Broadband Access to the Internet Over
Cable Facilities

COMMENTS OF THE CITY OF LEON VALLEY

These comments are filed by the City of Leon Valley in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, Leon Valley believes that:

- (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service;
- (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and
- (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Our community and the status of cable modem service.

Leon Valley is a City with a population of 9,238. It is served by Time Warner, which has approximately 3000 subscribers. The cable system serving our community offers subscribers about one hundred television channels. Cable modem service is offered in our community.

2. Our franchise and cable modem service.

Our franchise was issued in 1993 and did not directly address cable modem service. However under our franchise, the definition of gross revenues is broad enough to include cable modem service (see Section 12 b and Exhibit A). Pursuant to that provision, we are entitled to receive franchise fees on cable modem service. We received \$82,473.00 in cable franchise fees in 2001. According to the franchise, revenues from modem services are subject to franchise fees. These payments were made in consideration of the grant of the franchise.

Our franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the franchise terms. We estimate that we will lose \$80,000 over the next 5 years if we cannot charge a fee on revenues from cable modem service.

Neither the franchise requirements or the fees have prevented or delayed the roll-out of cable modem service in our community.

3. How we regulate cable modem service.

We receive complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services. Responding to these complaints requires significant staff time and effort. There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from regulation of cable service in many critical respects:

1. Cable modem service is marketed jointly with cable service.
2. A single bill is sent for cable modem and cable services, so billing complaints involve both.
3. Audit of modem services is not possible and because television service is a condition of modem service, this revenue can be coded as modem service.
4. Non payment for the use of the Right of Way owned by the City is not in keeping with the Telecommunications Act which provides for line access charges as a method of payment for the use and maintenance of the public right of way.

As a result, when one has service problems, the quality of the other service can be affected. Customers are advised on their bill by the cable operator that they can call our office with complaints, and as far as we can tell, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

Cable modem service is also subject to the following requirements under our franchise:

1. The operator is required to provide cable modem service throughout its service area, and is prohibited from redlining.
2. The operation is prohibited from discriminating against potential customers.

If the cable modem service is **NOT** considered cable service, it can be provided without regard to our regulations and requirements regarding permits and installations and use of the right of way. Rate regulation, audit, community service and other requirements would also not apply.

3. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband has to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. Our cable franchise requires that one free service be provided to each of the Cities facilities including the library. Additionally, each School in the City is entitled to one free facility. The funds that we obtain from cable modem franchise fees can help support these and other activities such as right of way maintenance. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community.

Respectfully submitted,

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